

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ANTHONY TIONGSON
12450 E. Oak Creek Lane
Cerritos, CA 90703

Certified Public Accountant License No. 16032

Respondent.

Case No.: AC-2010-32

OAH No.: 2011090567

DECISION AND ORDER

The attached Proposed Decision and Order of the Administrative Law Judge is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on September 1, 2012

It is so ORDERED on August 2, 2012.



For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ANTHONY A. TIONGSON

Certified Public Accountant License No. 16032,

Respondent.

Case No. AC-2010-32

OAH No. 2011090567

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, on June 11, 2012, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Geoffrey Ward, Deputy Attorney General, represented Patti Bowers (Complainant). Paul Raymond, Esq., represented Anthony A. Tiongson (Respondent), who was also present.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as the Executive Officer of the California Board of Accountancy (Board), Department of Consumer Affairs, State of California. Respondent submitted a Notice of Defense, which contained a request for the hearing that ensued.

2. On December 11, 1970, the Board issued Certified Public Accountant License No. 16032 to Respondent. The license was in full force and effect at all times relevant, and will expire on March 31, 2013, unless renewed.

Respondent's Conviction and the Underlying Circumstances

3. On April 1, 2009, Respondent was convicted on his plea of guilty to one count of violating title 26 United States Code section 7207 (filing a false tax return), a misdemeanor, in the United States District Court, Central District, State of California, Case No. SACR 08-31-AG.

4. Respondent was sentenced to one year of unsupervised probation, under terms that he not violate any laws, and that he report his conviction to the Board within 45 days. All fines were waived.

5. Pursuant to the allegations of the Superseding Information, containing the charge to which Respondent pled guilty, Respondent aided and assisted in the preparation and presentation to the Internal Revenue Service (IRS) of forms on behalf of two taxpayers for the tax year 2001 which represented that California was not part of the United States as defined in the Internal Revenue Code; and that Respondent well knew at that time that the IRS considered California part of the United States for tax purposes.

6. However, it was also established that during the four years from 1999 to 2003, covering the tax years of 1998 through 2002, Respondent filed similar false federal income tax returns for approximately 20 to 25 clients. In those returns, Respondent filed a form 2555 which falsely claimed his clients' income earned in California was not subject to federal income tax, and that those clients' California income was actually foreign income. Form 2555, used for the Foreign Income Exclusion, is typically filed by those living abroad for an extended period of time when income is earned.

7. Respondent's crime is substantially related to the qualifications, functions or duties of a certified public accountant in that, to a substantial degree, it evidences present or potential unfitness of a certified public accountant to perform the functions authorized by his or her certificate in a manner consistent with the public health, safety, or welfare. Specifically, Respondent's crime, by its elements and underlying circumstances, involved dishonesty, where Respondent participated in filing a tax return by falsely representing that income earned by those living in California was not subject to income tax because California was not part of the United States for tax purposes. (Cal. Code Regs, tit. 16, § 99, subd. (a).)

8. Respondent began filing tax returns using form 2555 in 1999 after attending a seminar where the presenter represented himself as a former employee of the IRS and expert on the Internal Revenue Code. During this seminar, the presenter advised those in attendance that tax filers could claim that income earned in California (and other states) is not subject to federal income tax, because California is not a state for purposes of the Internal Revenue Code, based on an interpretation of the Internal Revenue Code that federal income tax laws only apply to federal enclaves, such as the District of Columbia and Puerto Rico, but not any of the 50 states. Respondent was surprised to hear such advice, because he thought it sounded "wacky" and was hard for him to believe. Although he reviewed the provisions of the law cited by the presenter, Respondent did little to no other research to confirm or validate the position articulated by the presenter or to address Respondent's own questions and concerns.

9. In or about 2003, the IRS began auditing Respondent's clients for whom he had filed the form 2555. The IRS demanded those clients return the tax refunds that were granted to them as a result of filing these forms.

10. Respondent assisted some of those clients respond to the IRS audits. Although Respondent advised his clients to reiterate the argument that income earned in California was not taxable, he also advised his clients to pay the refunds back to the IRS, which they did. Those clients also paid penalties and interest to the IRS.

11. The IRS assessed paid-preparer penalties against Respondent, as well, for filing frivolous tax returns. Respondent ceased using form 2555 under similar circumstances after he became aware of the first IRS audit.

12. After Respondent was convicted in 2009, the IRS suspended Respondent, barring him from representing clients before the IRS. The suspension is indefinite, pending an appeal filed by Respondent contesting the suspension. The appeal has not been heard yet. Respondent remains suspended.

13. The standard of care for preparing tax returns was established by the persuasive expert opinions offered by the Board's Supervising Investigative CPA, Paul Fisher, which were corroborated by section 1-8 of the "Statements on Standards for Tax Services" produced by the American Institute of Certified Public Accountants, Inc. (AICPA) [Aug. 2000]. The standard of care for preparing tax returns requires a tax preparer to not recommend a tax position unless the tax preparer has a good faith believe that the position has a realistic possibility of being sustained. Formulating such a good faith belief requires considering well-reasoned construction of the applicable statutes, well-reasoned articles or treatises, or pronouncements issued by the applicable taxing authority. The standard of care also requires that a tax preparer not recommend a tax return position that he or she concludes to be frivolous. When recommending a tax position that may be questionable, the standard of care requires the tax preparer to advise the taxpayer of the potential penalties of such a tax position and the opportunity to avoid such penalties through disclosure.

14. Respondent breached the standard of care in his profession by taking a tax position that he knew to be frivolous. The tax position that California is not part of the United States for income tax purposes, and that income earned in California could be treated as foreign income, was not a well-reasoned construction of the applicable statutes, was not supported by well-reasoned articles or treatises, and has been condemned by IRS pronouncements. In deciding to take this position, Respondent relied only on the opinion of one so-called tax expert presented in a seminar. The presenter at the seminar was not a proven tax authority. The proposition that income earned in California by a resident of this state is foreign income is, on its face, frivolous. Despite the fact that Respondent had misgivings about that tax position advocated at the seminar he attended, Respondent did little to no independent research to verify or confirm the validity of the presenter's position. By making his guilty plea, Respondent also admitted that he filed at least one tax return knowing that the IRS considered California to be part of the United States for tax purposes.

Background, Mitigation, Aggravation and Rehabilitation

15. Background. Respondent is 81 years old. He began practicing as a CPA in California in 1970 after obtaining his license. He spent the first several years working as a CPA for others. In approximately 1977, he started his own accounting firm. He worked part-time in his firm until he accumulated enough clients to work full-time there, which he did for approximately 30 years. After being suspended by the IRS, Respondent sold his accounting practice to his son. Respondent still performs accounting duties for his son's practice on a limited basis. Respondent refers to himself as being "basically retired."

16. Mitigation. Respondent established the following facts in mitigation:

A. He has no prior record of discipline with the Board over his 40 year career.

B. He cooperated with the Board's investigation.

C. Both the federal court and IRS treated Respondent with leniency, which tends to discount the severity of his misconduct. Respondent initially stood trial on several felony counts of aiding and assisting in the preparation of false income tax returns. A mistrial was declared after a hung jury deadlocked in favor of Respondent's acquittal. The judge gave Respondent lenient treatment in his sentence after the plea bargain, by sparing the usual probation investigation and report, placing Respondent on unsupervised probation for a short period, and waiving any fines. Although the IRS has suspended Respondent from representing taxpayers before it, the IRS substantially reduced the monetary penalties assessed against Respondent from \$17,000 to \$5,000. The IRS also chose not to seek civil injunctive relief against Respondent, though it typically does against those who commit violations similar to Respondent's.

D. Respondent advised each involved client of the risks associated with filing the form 2555. He provided them with information to conduct their own review and research of the tax position he was advocating. Most clients simply deferred to Respondent, but a few conducted their own investigation and agreed with Respondent. Upon request, Respondent assisted the taxpayers involved in IRS audits. He refunded the fees accepted from all the clients involved in audits, and assisted some of his clients with penalty and interest payments to the IRS. No evidence was presented indicating that any of the involved clients suffered an unreimbursed financial injury. None of the involved clients complained to the Board about Respondent or took legal action against him.

E. Despite the fact that the 2555 forms were improperly submitted, Respondent still acknowledged on each form that the taxpayer involved resided in California. Thus, Respondent did not obfuscate the issue by misrepresenting the underlying facts on the forms. Moreover, Respondent made sure that the involved clients paid their taxes to the State of California, although the amount of those taxes was decreased somewhat by adjustments caused due to their federal taxes including the deduction from form 2555.

F. Although Respondent engaged in his misconduct over a four year period, he immediately stopped submitting false 2555 forms upon learning of the first IRS audit of an involved client. Respondent never again submitted a form 2555 under such circumstances, meaning it has been well over nine years since his last act of misconduct.

G. Respondent has demonstrated recognition that the tax position he took in submitting the 2555 forms was frivolous. Respondent testified that the lesson he has learned from these events is to "do as the IRS tells me." It is unlikely that in the future Respondent will engage in similar misconduct.

17. Aggravation. A review of the Board's Disciplinary Guidelines [7th edition 2011] (Guidelines) reveals the presence of the following aggravating facts. Based on the circumstances found above, Respondent's underlying misconduct was knowingly committed. The misconduct occurred over a four year period. However, Respondent stopped using the 2555 forms improperly once he learned of the first audit. Respondent knew or should have known that his advocated tax position would ultimately cause financial harm to his clients in the form of penalties and interest. However, he fully advised his clients up front of those risks and apparently made them whole after the IRS audits.

18. Rehabilitation. No evidence was presented indicating that Respondent has engaged in any subsequent misconduct. He has fully complied with the terms of his conviction and IRS administrative sanctions: Respondent appeared respectful during the hearing and of the Board's position in this matter. He appeared respectful of the IRS's authority and positions it has taken with regard to the tax returns in question. Respondent was candid and forthcoming when interviewed by the Board before the Accusation was filed and when testifying during the hearing. He has no other known criminal record. Over nine years have occurred since his last act of misconduct.

Costs

19. Complainant established costs in the amount of \$11,195.54 were reasonably incurred by the Board in the investigation and prosecution of this case.

LEGAL CONCLUSIONS

1. *First Cause for Discipline* (Substantially Related Conviction). Respondent is subject to disciplinary action under Business and Professions Code sections 5100, subdivision (a), and 490, in conjunction with California Code of Regulations, title 16, section 99, subdivision (a),¹ in that Respondent was convicted of one misdemeanor count of filing a false federal tax return, a crime substantially related to the qualifications, function, or duties of a certified public accountant. (Factual Findings 1-7.)

¹ All further statutory and regulatory references are to the Business and Professions Code and the California Code of Regulations, title 16.

2. *Second Cause for Discipline (Dishonesty).* Respondent is subject to disciplinary action under section 5100, subdivision (c), for committing acts of dishonesty, in that Respondent filed false tax returns claiming his clients' California income was subject to the foreign income exclusion because California was not part of the United States for tax purposes. The term dishonesty is not specifically defined in the Accountancy Act or any other known statute. In fact, it has been noted that "dishonesty" is a term of broad meaning and the situations in which it may become manifest are infinite. (*Rhoades v. Savage* (1963) 219 Cal.App.2d 294, 299.) However, the closely related term "deceit" is defined by Civil Code section 1710 as including the "assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true." In this case, it was established that Respondent submitted frivolous tax returns under circumstances in which he had no reasonable ground to believe the tax position he took was true. (Factual Findings 1-14.)

3. *Third Cause for Discipline (Repeated Negligent Acts).* Respondent is subject to disciplinary action under section 5100, subdivision (c), in that Respondent repeatedly filed false or misleading tax returns for approximately 20 to 25 clients over a span of approximately four years. These repeated acts breached the standard of care expected of accountants in preparing tax returns, in that Respondent submitted tax claims which he knew to be frivolous. (Factual Findings 1-14.)

4. *Fourth Cause for Discipline (Willful Violation of Rules Promulgated by the Board).* Respondent is subject to disciplinary action under section 5100, subdivision (g), for violating Board Rule 58 (Cal. Code Regs, tit. 16, § 58), in that he failed to comply with professional standards by taking the frivolous tax position that California is not part of the United States for income tax purposes, and that income earned in California could be treated as foreign income. (Factual Findings 1-14.)

5. *Fifth Cause for Discipline (Suspension of the Right to Practice before Any Governmental Body).* Respondent is subject to disciplinary action under section 5100, subdivision (h), in that the IRS has indefinitely suspended his right to practice before it. (Factual Findings 1-12.)

6. *Sixth Cause for Discipline (Knowing Preparation of False or Materially Misleading Financial Statements).* Respondent is subject to disciplinary action under section 5100, subdivision (j), in that he knowingly prepared false or materially misleading financial statements, reports or information on behalf of his clients; namely, he falsely submitted Foreign Income Exclusion forms for California residents knowing that their income was earned in California. (Factual Findings 1-14.)

7A. *Disposition.* The Board's Guidelines have been considered in determining the discipline to be imposed in this matter. Pursuant to the Guidelines, serious discipline in this case is warranted, but not revocation. (Factual Findings 1-18.)

7B. Respondent's misconduct is considered serious. He knowingly took a frivolous tax position in tax returns filed with the IRS for several clients over a four year period. He subjected the involved clients to financial penalties, which were later imposed by the IRS. He was later convicted of one misdemeanor count of filing a false tax return. In so doing, Respondent breached professional standards governing accountants preparing tax returns, and has been suspended from representing taxpayers before the IRS.

7C. There are several facts which mitigate the severity of Respondent's misconduct. The federal criminal court and IRS have both recognized the presence of such mitigation by treating Respondent with leniency in his criminal sentencing and administrative discipline. Respondent has an otherwise unblemished record with the Board in over 40 years of practice. He has cooperated with the Board in its investigation and was candid during this proceeding. Though he subjected his clients to financial harm, he advised them of the associated risks before submitting the tax returns. He assisted his clients in dealing with the IRS audits, he refunded to them their fees paid to him, and he paid some of the interest and penalty assessments. None of his clients complained to the Board about Respondent or took legal action against him. Overall, the mitigating facts outweigh the few aggravating facts. Although Respondent did not make a compelling case of rehabilitation, he still has demonstrated a satisfactory level of rehabilitation, indicating that he is unlikely to commit similar violations in the future. The fact that he has sold his practice to his son and substantially reduced his workload makes him less of a risk to the consuming public.

7D. Under the circumstances, discipline less than the maximum is warranted. For the six causes of discipline established in this case, the Guidelines suggest revocation as the maximum penalty; the Guidelines suggest a stayed revocation under three years of probation, with a significant period of suspension and optional terms warranted by the misconduct as the minimum discipline. Therefore, an order placing Respondent on five years probation, including a one year suspension, is warranted. Since Respondent has been suspended from representing clients before the IRS, he should be restricted from preparing federal tax returns during the period of that suspension. He should also be required to take ethics continuing education courses. However, since his conduct relative to his clients has not been seriously implicated in this matter, terms including supervised practice, restitution, or prohibition from handling funds are not warranted.

8. *Costs.* Section 5107 provides, in pertinent part, that the Board's Executive Officer may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct a licensee found to have committed a violation(s) of the Accountancy Act (specifically, division 3, chapter 1 of the Business and Professions Code) to pay to the Board all reasonable costs of investigation and prosecution in the matter. In this case, it was established that Respondent violated provisions of the Accountancy Act. It was also established that costs in the amount of \$11,195.54 were reasonably incurred by the Board in the investigation and prosecution of this case. Therefore, Respondent shall be ordered to reimburse the Board costs in the amount of \$11,195.54. (Factual Findings 1-19.)

ORDER

Certified Public Accountant Certificate No. CPA 16032, issued to Respondent Anthony A. Tiongson, is revoked pursuant to Legal Conclusions 1-7, separately and for all of them. However, revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. Cost Reimbursement

Respondent shall reimburse the Board \$11,195.54 for its investigation and prosecution costs. The payment shall be made in quarterly payments (due with quarterly written reports), the final payment being due one year before probation is scheduled to terminate.

3. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. The respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. Comply With Probation

Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation terms and conditions.

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6. Practice Investigation

Respondent shall be subject to, and shall permit, a practice investigation of the respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. Comply With Citations

Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

8. Tolling of Probation for Out-of-State Residence/Practice

In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

9. Violation of Probation

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

11. Suspension

Respondent is suspended for one year. During the period of suspension Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, section 5051.

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12. Restricted Practice


Respondent shall be prohibited from preparing and/or filing federal tax returns while he is suspended by the IRS from representing clients before it. If the suspension is modified or replaced, Respondent shall comply with any orders issued by the IRS.

13. Ethics Continuing Education

Respondent shall complete four hours of continuing education in course subject matter pertaining to the following: a review of nationally recognized codes of conduct emphasizing how the codes relate to professional responsibilities; case-based instruction focusing on real-life situational learning; ethical dilemmas facing the accounting profession; or business ethics, ethical sensitivity, and consumer expectations. Courses must be a minimum of one hour as described in California Code of Regulations, title 16, section 88.2. The courses must be passed prior to resumption of practice after the suspension imposed herein.

If Respondent fails to complete said courses within the time period provided, Respondent shall so notify the Board and shall cease practice until Respondent completes said courses, has submitted proof of same to the Board, and has been notified by the Board that he may resume practice. In any event, failure to complete the required courses no later than 100 days prior to the termination of probation shall constitute a violation of probation.

Dated: June 26, 2012



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC- 2010-32

12 **ANTHONY A. TIONGSON**
12450 E. Oak Creek Lane
13 Cerritos, CA 90703

A C C U S A T I O N

14 Certified Public Accountant License No. 16032

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs.

22 2. On or about December 11, 1970, the California Board of Accountancy issued
23 Certified Public Accountant License No. 16032 to Anthony A. Tiongson (Respondent). This
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on March 31, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the California Board of Accountancy
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 5100 states:

4 "After notice and hearing the [Accountancy] board may revoke, suspend, or refuse to
5 renew any permit or certificate granted under Article 4 (commencing with Section 5070) and
6 Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate
7 for unprofessional conduct that includes, but is not limited to, one or any combination of the
8 following causes:

9 (a) Conviction of any crime substantially related to the qualifications, functions
10 and duties of a certified public accountant or a public accountant.

11

12 (c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
13 the same or different engagements, for the same or different clients, or any combination of
14 engagements or clients, each resulting in a violation of applicable professional standards that
15 indicate a lack of competency in the practice of public accountancy or in the performance of the
16 bookkeeping operations described in Section 5052.

17

18 (g) Willful violation of this chapter or any rule or regulation promulgated by the
19 Board under the authority granted under this chapter.

20

21 (h) Suspension or revocation of the right to practice before any governmental
22 body or agency.

23

24 (j) Knowing preparation, publication or dissemination of false, fraudulent, or
25 materially misleading financial statements, reports, or information."

26 5. Section 490 states, in pertinent part, that a board may suspend or revoke a
27 license on the ground that the licensee has been convicted of a crime substantially related to the
28 qualifications, functions, or duties of the business or profession for which the license was issued.

1 REGULATORY PROVISION

2 6. California Code of Regulations, title 16, section 58 states:

3 "Licensees engaged in the practice of public accountancy shall comply with all
4 applicable professional standards, including but not limited to generally accepted accounting
5 principles and generally accepted auditing standards."

6 7. California Code of Regulations, title 16, section 99 states, in pertinent part:

7 "For the purposes of denial, suspension, or revocation of a certificate or permit
8 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
9 crime or act shall be considered to be substantially related to the qualifications, functions or
10 duties of a certified public accountant or public accountant if to a substantial degree it evidences
11 present or potential unfitness of a certified public accountant or public accountant to perform the
12 functions authorized by his or her certificate or permit in a manner consistent with the public
13 health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving
14 the following:

15 (a) dishonesty, fraud, or breach of fiduciary duty of any kind

16 ...

17 (c) Gross negligence in the practice of public accountancy or in the performance of
18 the bookkeeping operations described in Section 5052 of the code;

19 (d) Violation of any of the provisions of Chapter 1, Division III of the Business and
20 Professions Code [the Accountancy Act] or willful violation of any rule or regulation of the
21 board."

22 COST RECOVERY

23 8. Section 5107, subdivision (a), states, in pertinent part:

24 "The executive officer of the [Accountancy] board may request the administrative law
25 judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a
26 permit or certificate found to have committed a violation or violations of this chapter to pay to the
27 board all reasonable costs of investigation and prosecution of the case, including, but not limited
28 to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

STATEMENT OF FACTS

9. On or about April 1, 2009, Respondent was convicted on his plea of guilty to one count of violating Title 26, U.S. Code, Section 7207 (filing a false tax return), a misdemeanor, in the United States District Court, Central District, State of California, Case No. SACR 08-31-AG entitled, *United States of America v. Anthony Antonio Tiongson*.

10. While Respondent was convicted of one count of filing a false tax return, the circumstances surrounding the conviction are that for four years from 1999 to 2003, Respondent filed false federal income tax returns for approximately 20 to 25 clients. In those returns, Respondent falsely claimed his clients' income earned in California was not subject to federal income tax. He had his clients claim their California income was actually foreign income by filing a Form 2555, Foreign Income Exclusion, a form typically filed by those living abroad for an extended period of time.

11. Respondent began filing tax returns using the Foreign Income Exclusion forms in 1999 after attending a seminar that presented a scheme for domestic residents to evade income and employment taxes. Under this scheme, tax filers would claim that income earned in California (and other states) is not subject to federal income tax, because, its proponents claim, California is not a state for purposes of the Internal Revenue Code (they believe federal income tax laws only apply to federal enclaves, such as the District of Columbia and Puerto Rico, but not any of the 50 states).

12. On or about 2003, the Internal Revenue Service (IRS) began auditing Respondent's clients for whom he had filed frivolous Foreign Income Exclusion forms. The IRS required these clients to return the tax refunds that were granted as a result of filing these forms. These clients also paid penalties and interest. The IRS assessed paid-preparer penalties against Respondent, as well, for filing frivolous tax returns. Respondent ceased filing Foreign Income Exclusion forms following these audits.

13. After Respondent pled guilty to filing a false tax return in 2009, the IRS suspended Respondent, barring him from representing clients before the IRS.

14. After being suspended by the IRS, Respondent sold his accounting practice to

1 his son. Respondent still performs accounting duties for his son's practice.

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Substantially Related Conviction)**

4 15. Respondent is subject to disciplinary action under sections 5100(a) and 490, in
5 conjunction with California Code of Regulations, title 16, section 99, in that Respondent was
6 convicted of filing a false federal tax return, a crime substantially related to the qualifications,
7 function, or duties of an accountant, as set forth in paragraphs 9 through 14, incorporated and
8 realleged herein by this reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dishonesty and Fraud)**

11 16. Respondent is subject to disciplinary action under section 5100(c) for
12 dishonesty and fraud in that Respondent filed false tax returns claiming his clients' California
13 income was subject to the foreign income exclusion as set forth in paragraphs 9 through 14,
14 incorporated and realleged herein by this reference.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Repeated Negligent Acts)**

17 17. Respondent is subject to disciplinary action under section 5100(c), in that
18 Respondent repeatedly filed false or misleading tax returns for approximately 20 to 25 clients
19 over a span of approximately four years as set forth in paragraphs 9 through 14, incorporated and
20 realleged herein by this reference. These repeated acts failed to meet the standard of care
21 expected of accountants in preparing tax returns.

22 18. Professional standards for preparing tax returns require a tax preparer to in
23 good faith believe that a tax return position is warranted in existing law, and, in reaching such a
24 conclusion to consider a well-reasoned construction of the applicable statutes, well-reasoned
25 articles or treatises, or pronouncements issued by the applicable taxing authority.

26 19. Respondent's position that California is not part of the United States for income
27 tax purposes, and that income earned in California could be treated as foreign income was not a
28

1 well-reasoned construction of the applicable statutes, was not supported by well-reasoned articles
2 or treatises, and has been condemned by IRS pronouncements.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Willful Violation of Rules Promulgated by the Board)**

5 20. Respondent is subject to disciplinary action under section 5100(g), for violating
6 Board Rule 58, in that he failed to comply with professional standards in filing Foreign Income
7 Exclusion forms, intended for nonresidents, for California residents, as set forth in paragraphs 9
8 through 14, and paragraphs 18 through 19, incorporated and realleged herein by this reference.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Suspension of the Right to Practice before Any Governmental Body)**

11 21. Respondent is subject to disciplinary action under section 5100(h), in that the
12 IRS has suspended his right to practice before the IRS, as set forth in paragraphs 9 through 14,
13 incorporated and realleged herein by this reference.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Knowing Preparation of False or Materially Misleading Financial Statements)**

16 22. Respondent is subject to disciplinary action under section 5100(j), in that he
17 knowingly prepared false or materially misleading information for his clients, as set forth in
18 paragraphs 9 through 14, incorporated and realleged herein by this reference. Respondent falsely
19 submitted Foreign Income Exclusion forms for California residents knowing that their income
20 was earned in California.

21 **PRAYER**

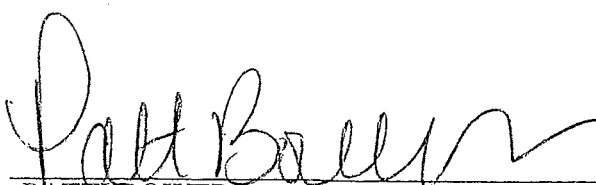
22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Board issue a decision:

24 1. Revoking, suspending, or otherwise imposing discipline upon Certified Public
25 Accounting License No. 16032, issued to Anthony T. Tiongson;

26 2. Ordering Anthony T. Tiongson to pay the Board the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 5107;

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3. Taking such other and further action as deemed necessary and proper.

DATED: July 8, 2011 

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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